

TUCKER & SNYDER EXPLORATION, INC.

IBLA 79-405

Decided February 4, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, suspending in part noncompetitive oil and gas lease offers N-20653, N-20654, N-20655, N-20847, and N-20849.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

2. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject To -- Wildlife Refuges and Projects: Generally

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Tucker and Snyder Exploration, Inc., has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 16, 1979, suspending in part its oil and gas lease offers (N-20653, N-20654, N-20655, N-20847 and N-20849).

On September 7, 1978, appellant filed these noncompetitive offers to lease 4,760 acres of public land in T. 14, 15, and 16, R. 63 E., Mount Diablo meridian, Nevada. BLM suspended the offers in part because the lands are within a proposed withdrawal to add lands to the National Desert Wildlife Range. BLM also required the filing of special protective stipulations.

BLM stated that it suspended action on the offers until the proposed withdrawal is decided and held the prepaid rental in a suspense account until processing can be resumed.

Appellant has filed this appeal objecting to the suspense of its applications stating that:

[T]he regulations, 43 C.F.R. 2091.2-5 do provide that an application for withdrawal does segregate the lands from settlement, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mineral leasing laws, however, this segregation is effective only to the extent that the proposed withdrawal, if effected would preclude the proposed action. The proposed withdrawal, provides that the lands shall be withdrawn "\* \* \* from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C. Ch. 2) but not the mineral leasing laws."

\* \* \* Appellant also submits that the proposed withdrawal for enlargement of the Desert National Wildlife Range in Nevada does not per se close the lands to oil and gas leasing, and that the determination of whether oil and gas leasing should be permitted is properly made only after a determination of whether oil and gas exploration and production would be compatible with the wildlife values of the lands.

The applied for lands have been proposed as an addition to the Desert National Wildlife Range which was created by Public Land Order (PLO) No. 4079 (31 FR 11547 (Sept. 1, 1966), as amended by 31 FR 12564 (Sept. 23, 1966)).

As appellant has indicated this withdrawal provides that certain lands are "withdrawn from all forms of appropriation under the public

land laws but not from location under the mining laws \* \* \* nor leasing under the mineral leasing laws, and reserved as the Desert National Wildlife Range \* \* \*."

[1] However, we have recently considered the same arguments in a similar fact situation in Kenneth E. Cummings, 43 IBLA 110 (1979), where we held that lands within the Desert National Wildlife Range are closed to oil and gas leasing pursuant to 43 CFR 3101.3-3. <sup>1/</sup> In Cummings we reviewed the interrelationship of the various regulations found in 50 CFR Subchapter C, Parts 25-35, governing the administration of the National Wildlife Refuge System and concluded that such lands were not open to leasing. We stated:

43 CFR 3101.3-1 (formerly 3120.3-3) provides that land in wildlife refuges may be leased competitively for oil and gas only if the U.S. Geological Survey has determined the lands are subject to drainage. 43 CFR 3109.4-2 (formerly 3103.2) provides that game range lands may be leased subject to special stipulations deemed necessary to protect the withdrawn land. Thus, at first blush, it would appear that game range lands may be leased for oil and gas, but the current definition of a National Wildlife Refuge, 50 CFR 25.12, includes all areas of the System except wildlife management areas. It therefore follows that the Desert National Wildlife Range is, by definition, a "National Wildlife Refuge" and so may not be leased noncompetitively for oil and gas.

<sup>1/</sup> The cited regulation reads as follows:

"§ 3101.3-3 Reserved and segregated lands.

"(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

"(1) Leasing. No offers for oil and gas leases covering wildlife refuge land will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director."

Section 3101.3-1 involves lands subject to drainage.

[2] We pointed to our earlier ruling in T. R. Young, Jr., 20 IBLA 233 (1975), where we noted that the withdrawal authority was separate from the Secretary's discretionary authority under the mineral leasing laws and found that, even though the lands at issue were not withdrawn from oil and gas leasing, the Secretary could still exercise that discretionary authority not to accept lease offers for those lands. We found that the general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3.3 (unless there is drainage) is such a formal exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act of 1920, as amended.

Contrary to the thrust of appellant's argument, since the lands already within the Desert National Wildlife Range are closed to oil and gas leasing, those lands which are within a proposed addition to the withdrawal would also be precluded from leasing under 43 CFR 2091.2-5.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

